

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

TIMOTHY J. ROBERTS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-06-136-F
)	
RICHARD SMOTHERMAN, et al.,)	
)	
Defendants.)	


ORDER

On October 27, 2006, plaintiff filed a Motion to Dismiss Without Prejudice (doc. no. 27), requesting dismissal of this case without prejudice. Rule 41 of the Federal Rules of Civil Procedure provides that “an action may be dismissed by the plaintiff without order of court . . . by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs.” Fed. R. Civ. P. 41(a)(1)(i). Plaintiff filed his motion, prior to service of an answer or a motion for summary judgment. Under the plain language of Rule 41, plaintiff had the right to voluntarily dismiss this case. Thus, plaintiff’s motion is construed as a notice of dismissal pursuant to Rule 41(a)(1)(i). As “[t]he filing of a notice of dismissal pursuant to Rule 41(a)(1)(i) does not require an order of the court,” plaintiff’s dismissal was effective on October 27, 2006, when it was filed. *See, Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003).

With the dismissal of this case on October 27, 2006, the court need not address the Motion to Dismiss on Behalf of Defendant Smotherman filed September 11, 2006 (doc. no. 24), the Report and Recommendation issued by United States Magistrate

Judge Doyle W. Argo on October 13, 2006 (doc. no. 26), and the Motion to Dismiss on Behalf of Defendant A.T. Brixey filed November 1, 2006 (doc. no. 29). Those matters are moot as a result of the dismissal.

Entered this 2nd day of November, 2006.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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